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Applicant: Carlos Ernesto KOSTER

Serial No.: 09/623,008

Group No.: 1744 -

Filing Date: 24 August 2000

Examiner: M. Chorbaji

Title: METHOD OF TREATMENT OF GOODS
WITH CARBON DIOXIDE AND NITROGEN

APPLICANT'S REPLY UNDER 37 C.F.R. 1.193(b)

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith, in triplicate, is the Applicants' Reply Brief responsive to the Examiner's Answer dated 08 September 2003.

Applicants believe that certain over-generalizations and characterizations contained in the Examiner's Answer need the clarification of a reply.

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450 on

10 NOVEMBER 2003

10 NOV 03
Date

Roland W. Moine
Signature

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Per sec. 7, it is the contention of the Examiner's Answer that the Claims stand ~~or fall together because Applicant has failed to provide reasons in support of their separate~~ status. Applicants are aware that the regulation of 37 CFR § 1.192(c)(7) states that "merely pointing out differences in what the claims cover is not an argument..." However, Applicant further notes that any rational discussion of separate patentability must begin with a recitation of the differences in what the claims cover. Applicant further notes that there is scant guidance in either of 37 CFR or the MPEP as to what is required beyond "merely reciting differences in what the claims cover."

Applicant has noted in sec. 7 of the Appeal Brief that two groups of Claims were intended as separate. Applicant must of necessity clearly set forth the distinctions in the limitations of Claims 1 and 5 and Claim 3. Applicant also noted the claim group distinctions in sec. 5 of the Appeal Brief and further stated: "Thus the claims present species of a method which utilizes exhaust gases of an on-site combustion system not previously adapted to provide for the treatment of the goods." Throughout the Appeal Brief Applicant has further pointed to reasons for separate patentability. A discussion of why the claim groups differ, and why a representative claim of each group is patentable over the prior art, is thus believed to have been inherently included in the Appeal Brief.

Nonetheless, Applicant has included in the present Reply further discussion that the cited references address neither species of the present invention and the reasons why both species are separately patentable over the references.

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Generally, the Examiner's logic of obviousness is as follows:

~~1) Banks teaches the use of the exhaust from "any" engine to provide treatment gases.~~

2) Firenzano teaches treating grain in ships.

3) Ships have engines.

4) Therefore a person having ordinary skill in the art would be led to provide treatment gases by using exhaust gases from a power plant also performing another function.

Addressing these points summarily for the edification of the Board:

1) Statement 1 above is not true because it is overbroad. The Examiner apparently supports such breadth by his sweeping statement at page 5, line 14 that: "Again Banks et al teaching [sic] is so generic that choosing any specific exhaust source is obvious." However, Banks more accurately teaches that any engine dedicated to providing the proper types of exhaust gases can be used. It is noted that the title of Banks is *Controlled Atmosphere Generating Equipment*. Banks does not teach using an "engine" which is performing a separate primary power function plus using its exhaust for treatment gases.

2) Firenzano teaches treating grains (in ships) by means of electrostatic cleaning. Even though Firenzano may teach that treatment gases are known, it does not teach using an "engine" which is performing a primary power function plus using its exhaust for treatment gases (particularly since the subject matter of Firenzano is not drawn to treatment gases).

3) Neither reference teaches using an "engine" which is in place for its primary power function plus using its exhaust for treatment gases, whether the "engine" is a motive

force for transporting a grain container, or an onsite boiler for oil extraction operations.

~~4) Therefore no person would be led by the references to the synergy of using an~~
“engine” which is in place for its primary power function and additionally using the engine exhaust for treatment gases, unless one had the benefit of impermissible hindsight upon understanding the present invention.

Specifically, it is the Examiner’s contention, per his sec. 10 “Grounds of Rejection,” as repeated at pages 3, 5 and 6 of the Examiner’s Answer, that Banks teaches the use of the exhaust of any engine (to produce treatment gases). Here the Examiner has gone too far in generalizing the teachings of Banks. Banks does not teach the use of any engine. Banks does not teach or suggest the use of a motive power engine as would be required particularly in Claims 1 and 5.

The Examiner further states at page 5, line two, that “Banks et al teaches the exhaust of any source of motive power can be utilized...” This statement is clearly in error. Again, Banks does not teach or suggest the use of an engine whose primary purpose is motive power to also provide treatment gases.

The Examiner has made a leap of logic (motivated only by reading the present invention) that because engines can be used to provide motive power, and because engines can be used to provide treatment gases, the two engines are necessarily one and the same.

Likewise, while Firenzano teaches that grains may be treated in the holds of ships, Firenzano does NOT teach the use of a motive power engine to produce the treatment gases. Thus Firenzano does not suggest the method of the present invention which utilizes

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exhaust gases of an on-site combustion system not previously adapted to provide for the treatment of the goods, and particularly does not suggest the species of Claims 1 and 5 which is particularly drawn to a system wherein the combustion system also utilizes a motive power engine for a movable container of the goods.

Likewise with respect to Claim 3, neither Banks nor Firenzano teaches utilizing exhaust gases of an on-site combustion system not previously adapted to provide for the treatment of the goods. Thus the species of Claim 3, which is particularly drawn to a system wherein the combustion system is a boiler system for an oil extraction plant at which the goods are located, cannot be considered obvious over the cited references. Again, any suggestion that the cited references provide teachings of a species of method which utilizes exhaust gases of an on-site combustion system not previously adapted to provide for the treatment of the goods is clearly a *post hoc* rationalization made with the present invention firmly in mind.

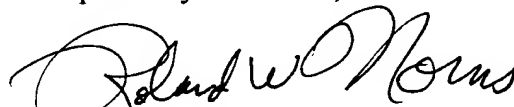
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~~For all the foregoing reasons it is respectfully requested that the Board rule in~~

Applicants' favor and overturn the rejections of the claims at issue.

Favorable consideration is requested.

Respectfully submitted,



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